IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.: 366 of 2000.

Reserved on: 29.11.2007.

Decided on: 07.12.2007.

State of Himachal Pradesh. … … Appellant.

Versus

B.D. Sharma. … … Accused/Respondent.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the Appellant: **Mr. M.A. Khan, Deputy Advocate General.**

For the Accused/Respondents: **Mr. Rakesh Jaswal, Advocate.**

Rajiv Sharma, Judge:

A challenge has been laid to the judgment of acquittal dated 7.1.2000, passed by the learned Additional Sessions Judge (I), Kangra at Dharamshala, camp at Una in Criminal Appeal No.40/94 (1/94) under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act (hereinafter referred to as the Act).

The facts in nut-shell are that on 13.10.1990 around 8.50 A.M. the Food Inspector (PW-2) visited the shop of the accused. The accused was running the shop in the name of M/s Sharma and Co., Mehatpur. The Food Inspector purchased gur weighing 900 grams against payment of Rs.3.60. The gur was put into three neat, clean and dry bottles and

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Whether reporters of local papers may be allowed to see the judgment? No.

thereafter the bottles were properly corked and sealed. Puncchnama was prepared. One of the sample alongwith Form-VII was sent to the Public Analyst, Chandigarh and another form-VII alongwith specimen seal impression was sent separately under registered post to the Public Analyst. On receipt of the report of Chemical Analyst, the contents of the sample were found to contain 1.19% Ash Insoluble in Hydrochloric acid against the maximum prescribed standard of 0.5% and two living insects were also found present in the contents of the sample. The prosecution was launched against the accused under Section 16(1)(a)(i) read with Section 7 of the Act. The accused was charge-sheeted. He pleaded not guilty and claimed trial.

The prosecution examined three witnesses to prove the guilt of the accused. The statement of accused under Section 313 Cr.P.C, was recorded, where he pleaded innocence. The trial Court convicted and sentenced the accused to undergo rigorous imprisonment for a term of six months and to pay a fine of Rs.1,000/- and in default to undergo rigorous imprisonment for one month.

The accused preferred an appeal bearing No.40/94 (1/94). The appeal was accepted by the learned Additional Sessions Judge on 7.1.2000 and consequently, the judgment of the trial Court dated 20.12.1993 was set aside. Hence, this appeal.

The learned Deputy Advocate General had strenuously argued that the prosecution has proved the charge against the accused. He contended that the learned Additional Sessions Judge has mis-read the evidence and according to him, there was proper compliance with Section 10(7) of the Act and proper sanction was also accorded by the C.M.O. before launching the prosecution against the accused. He also contended that the C.M.O. had applied his mind before according the

sanction to launch the prosecution against the accused. Shri Rakesh Jaswal had supported the judgment dated 7.1.2000.

The sample was lifted by the Food Inspector on 13.10.1990. The shop of the accused is situate in the market place in Mehatpur. The prosecution had only associated PW-3 Shri Som Nath at the time of taking the sample by the Food Inspector. PW-3, Som Nath is a Halwai. It was incumbent upon the Food Inspector to ensure association of the independent witnesses from the market instead of associating the Halwai, who is always under the threat and fear of the Food Inspector. The appellate authority has rightly concluded that there was non-compliance with Section 10(7) of the Act.

The prosecution has failed to prove that there was proper sanction accorded by the C.M.O. It is evident from the contents of Ex.P-4 that it is in two different inks. Thus, it can be presumed that the sanction was not accorded by the C.M.O., but the contents of the same were written by PW-1. There is also non-application of the mind by the C.M.O. as is evident from the record while according sanction to launch prosecution. The C.M.O. is required to go through the documents in detail and the prosecution can be launched only in the public interest.

Consequently, it is held that the prosecution has failed to prove the charge against the accused and there is no illegality or infirmity in the judgment of the learned Additional Sessions Judge, dated 7.1.2000.

Accordingly, there is no merit in the appeal and the same is dismissed. The bail bonds furnished by the respondent-accused are discharged.

December 07, 2007. **(Rajiv Sharma),**
(sck) **Judge.**